Select Committee to Protect Private Property Rights

Tuesday November 8, 2005
3:30 p.m.—6:00 p.m.
Morris Hall

Meeting Packet

Allan G. Bense
Speaker

Marco Rubio
Chair

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Supplemental Response
by FL League of Cities

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Florida League of Cities, Inc.

November 3, 2005

Community Redevelopment Act: Proposed Procedural and Substantive Protections

The Florida League of Cities desires to retain the community redevelopment process as a viable, affordable, and workable tool to address local public policy concerns on slum or blight. The Florida League of Cities suggests the Legislature consider providing in the community redevelopment context additional procedural and substantive protections to private property owners facing an exercise of eminent domain which will result in a private-to-private transfer of property. The proposed protections can be generalized as:

1) Increased notice at the front-end of the CRA process of possible exercises of eminent domain;

2) A heightened process in the middle to provide property owners with additional procedural protections; and

3) Increased compensation at the tail-end for exercises of eminent domain.

Under this proposal, a local government would have two options to pursue regarding the use of eminent domain in community redevelopment. If a local government will not exercise the power of eminent domain for an eventual private-to-private transfer of property, the local government would follow the current community redevelopment process. However, if a local government will or believes that it may have to exercise the power of eminent domain for an eventual private-to-private transfer of the property, the local government would have to follow the proposed procedural process and provide heightened substantive protections. Specific procedural and substantive protections could include:

1) Prior to the finding of necessity stage in the CRA process (or possibly at the CRA plan adoption or plan amendment stage), require extraordinary notice be given to property owners within the CRA area that property may be subject to eminent domain and that private-to-private transfers of property may occur. Require appropriate public meetings. The goal is to give potentially affected property owners an opportunity to influence the local legislative body and participate in the redevelopment effort at the very beginning, before many of the policy decisions are made and, from the individual owner's perspective, before the train is rolling and there is no effective way to move the track.

2) Require the finding of necessity resolution (or plan or plan amendment) to disclose the fact that property may be subject to eminent domain if negotiations fail, and disclose that assembly of land and private-to-private transfers of property may occur as a tool to address slum or blight conditions.

3) Require a community redevelopment plan to specifically provide for the use of the power of eminent domain, and require formal plan adoption prior to the use of the power of eminent domain.

4) Require good faith negotiations to acquire the property prior to the exercise of eminent domain, to include the submission of good faith and extraordinary offers for the property and minimum timeframes for property owners to consider such offers.

5) At an exercise of eminent domain proceeding, require the governing body to determine that each specific property subject to an eventual private-to-private transfer is "essential" (or another appropriate standard) to achieving the goals and objectives of the community redevelopment plan. This determination could be made in a quasi-judicial hearing after notice to the owner and based upon competent substantial evidence presented in the record to the local legislative body. That is the record which a judge would review without becoming the legislative policy maker. This is the same, now quite familiar, process followed to rezone property under an adopted comprehensive plan.

6) If a property is taken by eminent domain and will result in an eventual private-to-private transfer, require the payment of extraordinary compensation such as relocation costs and the payment of heightened extraordinary compensation if the property is homestead property.

No CRA Issues Except Eminent Domain

In creating the Select Committee to Protect Private Property Rights, Speaker Bense clearly delineated that the Select Committee's charge is to review the exercise of eminent domain within the State. With this narrow scope in mind, the Florida League of Cities suggests that no other community redevelopment issues outside the exercise of eminent domain be considered by the Committee. Special interest groups may view the Committee's proceedings as an opportunity to raise community development issues wholly outside exercising the power of eminent domain.

Proposed Changes to Definitions of "Slum" and "Blight" by Eminent Domain Attorneys Representing Condemnees

In the context of community redevelopment, several eminent domain attorneys representing condemnees propose substantial changes to the standards to determine "slum area" or "blight area," substantial changes to burdens of proof, and most importantly shifting a determination of "slum area" or "blight area" from locally elected officials to a single judge. As illustrated below, these proposals will require a judicial action to determine whether slum or blight exists for ALL community redevelopment activities (not just exercises of eminent domain). The proposals will also encourage lawsuits to establish judicial interpretations of the new standards and burdens. Because these proposed changes relate almost exclusively to exercises of eminent domain, meaning the lawsuits will be brought in the eminent domain context, attorney's fees will be at the public's expense. The Florida League of Cities suggests that rather than creating changes to the law which require further judicial action and interpretation, the Legislature consider the League's proposed procedural and substantive protections.

Proposed changes to the standards to determine "slum area" change the current process of having an elected local government body determine that an area meets the statutory factors to having local governments "prove" that the statutory factors have been met. Under this proposal, every determination of "slum area" (or "blight area") for all community redevelopment activities now goes to one judge to decide. Instead of having to "prove" the existence of a slum (or blight) area to a judge, local governments need a community redevelopment framework in which to make reasonable determinations of "slum area" (or "blight area") under the various circumstances that exist in Florida's extremely diverse communities. Once a local government makes a legislative determination that the statutory factors have been met to declare an area as either slum or blighted, appropriate levels of judicial deference should be maintained. Requiring local governments to "prove" each slum or blight determination to a judge will only increase the role (and expense) of attorneys in what should be a local legislative process.

The following proposed language illustrates several changes which will require judicial action and interpretations.

> "Slum area" means an area having physical or economic conditions proven to be conducive to disease, ...
>
> . . .
>
> Further, as a condition precedent to the use of eminent domain power, it must be shown that the existence of two or more of the factors used in support of a "slum" designation must predominate the immediate neighborhood surrounding the property sought to be condemned at the time of any proposed taking even though the neighborhood may already have been previously designated to be within a "slum area."
>
> . . .

Language requiring determinations to be "proven" is used throughout the proposed changes. Who is the local government required to make this "proof" to? What are the standards provided that a local government must meet, and a judge must make a determination of compliance? The underlined sentence provides new standards, which are not defined but subject to judicial interpretation, of "predominate," "the immediate neighborhood," "surrounding the property," etc. (Please note, the League is withholding comment on additional concerns with the proposed changes.) The proposed changes do nothing more than set the stage for complex, convoluted judicial challenges to local government actions.

All of the issues discussed above in the context of standards to determine "slum area" also apply to the proposed changes to "blighted area;" however, there are even more, undefined new standards for "blighted area" determinations, which will require greater judicial involvement.

The following illustrates just one problematic example of proposed redefinitions to the factors in a "blighted area" determination. The current factor reads, "Predominance of defective or inadequate street layout, parking facilities, roadways, bridges, or public transportation facilities."

The following addition is proposed, "except when this criterion is used to support a "blight" designation as a ground for the exercise of eminent domain, in which case the terms "defective" or "inadequate" shall mean that the infrastructure element must substantially fail to achieve the purpose for which it was originally constructed and that conservation and rehabilitation efforts cannot reasonably be achieved by the public entity charged with the maintenance of the infrastructure." "Substantially," "originally constructed," "reasonably," etc., will all require judicial interpretation (without the League even discussing any substantive merits of this proposed change). The additional proposed changes to the factors to make a determination of "blighted area" are similarly problematic. They will generate significant litigation and attorneys fees at public expense and consume limited judicial resources, not to mention shifting the debate over whether a particular exercise of eminent domain is in the public interest from the easily accessible and transparent arena of a locally elected legislative body to the chambers of a single circuit judge.

"He understands that judges are to interpret the law, not impose their preferences or priorities on the people." George W. Bush, October 31, 2005, referring to Samuel Alito, Supreme Court nominee.

Dual or "Bifurcated" Standards to Determine Slum or Blight for the Purpose of Eminent Domain and for Other Community Redevelopment Purposes (Tax Increment Financing)

It has been suggested that the Legislature create a dual or "bifurcated" process for local governments to determine if an area should be considered slum or blighted for the purpose of eminent domain, along with a separate or lesser standard for determinations of slum or blight for the purpose of tax increment financing or other community redevelopment purposes. While this proposal has been significantly discussed, after due consideration, the Florida League of Cities believes having a dual or "bifurcated" process will be unworkable, resulting in all slum or blight determinations meeting the heightened standard for eminent domain purposes.

Briefly, a community redevelopment area is typically funded through tax increment financing. Tax increment financing is a long-term financing mechanism, typically reaching out 20, 30, or more years, and it is typically used to support bonded indebtedness. Financing the bonds is dependent upon receiving tax increment proceeds. Meeting projected tax increment financing levels is dependent upon a community redevelopment plan being successfully implemented. Successful implementation of a community redevelopment plan may require the accumulation and consolidation of properties in the redevelopment area. It is not always known on the front-end of a redevelopment project if an exercise of eminent domain will be required to successfully accumulate and consolidate properties for redevelopment; however, bonds supported by tax increment financing may be issued at the front-end of a redevelopment project. Because successful tax increment financing may be dependent upon successful exercises of the power of eminent domain, bond purchasers will want reasonable assurances that exercises of eminent domain will be successful. Therefore, because of the potential interdependence upon successful tax increment financing with successful exercises of eminent domain, any heightened standard for exercising eminent domain becomes the *de facto* standard for tax increment financing.

The Florida League of Cities suggests that while a "bifurcated" process may have been initially considered, a "bifurcated" process will likely prove impracticable. In the alternative, the Florida League of Cities suggests:

1. Maintain a uniform determination of "slum area" or "blighted area" for all community redevelopment purposes.

2. Establish a dual community redevelopment eminent domain process dependent upon whether an exercise of eminent domain will eventually result in a private-to-private transfer of property:

    a. If an exercise of eminent domain will NOT result in a private-to-private transfer of property, maintain the current community redevelopment eminent domain process; or

    b. If an exercise of eminent domain will eventually result in a private-to-private transfer of property, create a community redevelopment eminent domain process by adding procedural and substantive protections as proposed by the Florida League of Cities.

Conclusion

The Florida League of Cities believes it has offered reasonable alternatives providing additional protections to private property owners in the community redevelopment context, while maintaining community redevelopment as a viable, workable, and affordable tool to address local slum or blight concerns. The proposals offered by eminent domain attorneys representing condemnees effectively change the community redevelopment process from being a determination made by locally elected officials, to placing each slum or blight determination before a single judge. In addition to this fundamental shift in the decision making process, these proposals significantly increase the role of attorneys in the entire community redevelopment context, resulting in significantly higher costs to achieve community redevelopment goals. These proposals will make the community development process an unviable, unworkable, and unaffordable tool to address local slum or blight conditions, which will ultimately result in a proliferation of slum or blight in Florida's local communities.

EminentDomain

Property Rights Coalition
PowerPoint Presentation

Property Rights Coalition PowerPoint Presentation

The Property Rights Coalition's Comments to the House Select Committee to Protect Private Property Rights

11/8/05

Butch Calhoun, Chairman
Wade L. Hopping
Dan R. Stengle

2005 PROPERTY RIGHTS COALITION

- A. Duda & Sons
- Assoc. of FL Comm. Developers Inc.
- Ben Hill Griffin, Inc.
- Brigham Moore
- Capital Ideas
- Carlton Fields, P.A.
- Clonts Farms
- Florida Association of Realtors
- Florida Cattlemen's Association
- Florida Chamber of Commerce
- Florida Citrus Mutual
- Florida Crystals
- Florida Farm Bureau Federation
- Florida Forestry Association
- Florida Fruit & Vegetable Assoc.
- Florida Home Builders Association
- FL Nursery and Landscape Growers
- Florida Pulp & Paper Association
- Georgia Pacific
- Lewis Longman & Walker
- Lykes Brothers, Inc.
- Pennington Moore, et al.
- Progress Energy
- Sugar Cane Growers Coop of Florid
- Sunshine State Milk Producer
- The Catalina Group, Inc.
- The Land Council
- U.S. Sugar Corporation

It Helps to Read the Instructions

Constitution Underpinnings of all Eminent Domain Activities

U.S. Constitution Amendment 5

"…nor shall private property be taken for public use, without just compensation."

Florida Constitution, Article 10 Section 6(a)

"(1) No private property shall be taken except for a public purpose and with full compensation paid to each owner…."

In the United States, the right to take private property is an extraordinary power.

The Community Redevelopment Act of 1969
(§163.330 – 163.463, F.S.)

What is a "slum area"?

An area having conditions conducive to disease, infant mortality, poverty or crime with a predominance of buildings or improvements that are dilapidated and which exhibit one or more of the following 3 factors:

(a) Inadequate ventilation, light, air, sanitation or open spaces
(b) Overcrowding and "high density of population"
(c) Conditions that endanger life or property

(See §163.340(7), F.S.)

What is a "Blighted area"?

An area with a substantial number of deteriorated structures "leading to economic distress or endangering life or property", and in which 2 or more of the following 14 factors are present::

1. Predominance of inadequate transportation facilities
2. No increase in assessed value in the last 5 years
3. Faulty lot layout
4. Unsanitary or unsafe conditions
5. Deterioration of site or other improvements
6. Inadequate and outdated building density patterns
7. Falling lease rates
8. Tax delinquency exceeding fair value of land
9. Higher vacancy rates
10. Higher crime rates
11. Higher number of fire and emergency calls
12. Excessive number of building code violations
13. Complex ownership issues preventing sale of property within the area
14. "Governmentally owned property" with adverse environmental conditions

(See §163.340(8), F.S.)

The "Blighted Area" Open Ended Catch All!

A "blighted area" also includes any area in which at least one factor is present and all affected taxing authorities agree that the area is blighted.

Reading Kelo and the Florida's CRA law together leads to the conclusion that

"Houston, we have a problem."

The PRC's Proposals for Fixing the CRA Law

1. Retain the current "blight" and "slum" area definitions for the purposes of creating CRA's.

2. Initial designation of CRA can continue to be a "legislative" determination subject to limited judicial review under the "fairly debatable" standard.

3. Prohibit taking by eminent domain for "economic development" purposes.

4. Create a narrow version of the definitions of "slum areas" and "blighted areas" for use when private property is being taken, subject to judicial review with a "heightened scrutiny." Burden of Proof on CRA-condemner by "clear and convincing" evidence.

Redefining "Blighted Area" in Taking Cases

Eliminate the use of the CRA authority's "catch all" provision from the blighted area definition in takings cases.

Require at least 3 factors to be present and limit taking factors to 8 of the 14 blighted area factors.

1. Predominance of inadequate transportation facilities
4. Unsanitary or unsafe conditions
5. Deterioration of site or other improvements
8. Tax delinquencies exceeding fair value of land
9. Higher vacancy rates
10. Higher crime rates
11. Higher number of fire and emergency calls
13. Excessive number of building code violations

Suggested Procedural Changes

- Require actual notice to the property owner of each parcel proposed to be taken before the condemnation resolution is passed.
- Require the adoption of a specific condemnation resolution for each parcel with specific quasi judicial findings of necessity and identification of the public purpose served by the taking.
- Require all taking resolutions be supported by clear and convincing evidence.
- Require that the CRA disclose, on the record at the takings hearing, its ultimate plans for the use of the property being taken.
- Create a "public purpose" requirement for takings under the Act, and set standards that courts must use to review such takings.
- Require courts to give heightened scrutiny to all private property takings.

Some Issues to Ponder

1. **Enhanced Compensation**

   Where occupied businesses and residences are being taken within a CRA:

- Requiring payment of business damages to the private property owner for both partial and total takings.
- Requiring payment of all actual relocation costs, for both business and residential.
- Requiring that full compensation include the replacement cost of any housing or buildings in order to offset economic losses to private property owners for the facilities being taken.
- Allow owner to prove highest and best use of his/her property if more valuable as assembled with other tracts or as envisioned by CRA Plan.

2. **Traditional Taking Treatment**

- Traditional takings for "public uses" and public activities should remain unchanged. Traditional takings include roads, public housing, public parks, public buildings, utility transmission lines and facilities, pipelines, railroads, canals, and drainage ways.

3. **Unimproved Parcels**

- Bona fide agricultural properties and operation – no takings allowed.
- Taking of unimproved parcels within CRA's – should it be allowed?
- Eliminate ability to seize open, unimproved land, simply because it is platted

Some Unanswered Questions?

1. How do we effectively reassemble parcels in antiquated subdivisions without the use of eminent domain?

2. Do we need to create a separate economic development statute with extremely limited taking authority?

3. When a local government or CRA takes truly slum or blighted property, can they ever convey it to another private owner? If so, under what terms and conditions?

4. Should the Kelo "fix" be statutory or constitutional?

5. Should the legislature create standing committees on Protection of Private Property Rights for the 2007 and 2008 sessions?

In Sum

At a minimum, the Florida CRA law should be amended to make it clear that the eminent domain powers of the Act may not be used to take private property from one person to convey to another private person for economic development purposes.

The home rule powers of counties and municipalities should be amended to ensure that their eminent domain powers are likewise limited.
(See §127.01, 125.045, 166.411, and 166.021, F.S.

The PRC recommends a dual approach to the CRA Act which would enable Community Redevelopment Agencies to continue to function as financing mechanism by making it relatively easy for them to use CRA's for Tax Increment Financing, while at the same time discouraging the excessive use of eminent domain in the taking of private property. This bifurcated approach would give home and business owners a better chance to challenge a decision to take their private property on an individual, case-by-case basis.

2005 PROPERTY RIGHTS COALITION

- A. Duda & Sons
- Assoc. of FL Comm. Developers Inc.
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- Florida Pulp & Paper Association
- Georgia Pacific
- Lewis Longman & Walker
- Lykes Brothers, Inc.
- Pennington Moore, et al.
- Progress Energy
- Sugar Cane Growers Coop of Florid
- Sunshine State Milk Producer
- The Catalina Group, Inc.
- The Land Council
- U.S. Sugar Corporation

Responses to Matrix 1

Responses to Matrix 1

Hamby, Tom

From: Hamby, Tom

Sent: Monday, October 31, 2005 5:11 PM

To: 'A Schuster'; 'Adam Babington'; 'Alan Shelby'; 'Andy Brigham'; 'Bill Hunter'; 'Bill Moore'; 'Bob Gill'; 'Bob McKee'; 'Bradley Gould'; 'Brian Bolves'; 'Butch Calhoun'; 'Carol Saviak'; 'Carol Westmoreland'; 'Carrie Roth'; 'Charlie Siemon'; 'Cheryl Fulford'; Nocco, Chris; 'Chuck Aller'; 'Chuck Littlejohn'; 'Dana Berliner'; 'Darcy Foster'; 'David Cardwell'; 'David Daniel'; 'David Sigerson Jr.'; 'Debra Schiro'; 'Doug Buck'; 'Doug Sale'; 'Elithia Stanfield'; 'Floyd Johnson'; 'Ginger Delegal'; 'H Adams Weaver'; 'Herbert Polson'; 'Jackie Corcoran'; 'James Garner'; 'Jim Spalla'; 'John Thomas'; 'Jordan Connors'; 'Keith Hetrick'; 'Kenneth Towcimak'; 'Keyna Cory'; 'Kraig Conn'; 'Larry Thornberry'; 'LeeAnn Fisch'; 'Linda Friar'; 'Lori Killinger'; 'Louis Roney'; MACLURE.ERIC; 'Margie Menduni'; 'Martha Edenfield'; 'Matt Mucci'; 'Matthew Warner'; 'Patricia Greene'; 'Pete Dunbar'; 'Professor Ruhl'; 'Professor Wolf'; 'Rayford Taylor'; 'Rick Watson'; 'Rob Wilson'; 'Robert Urban'; 'Sam Ard'; 'Scott Dudley'; 'Sheri Coven'; 'Steve Tabano'; 'Steven Lindorff'; 'Tedd Williams'; 'Teresa Tinker'; 'Tom Pelham'; 'Trey Golman'; 'Valeri Fernandez'; 'Vince Cautero'; 'Wade Hopping'; 'Walt Augustinowicz'; 'Wayne Malaney'

Cc: Nocco, Chris; Camechis, Karen; Larson, Lisa; Bovo, Viviana; Thomas, Tom

Subject: Select Committee to Protect Private Property Rights

Attachments: Matrix Draft 1.xls

At the Select Committee's October meeting, Chair Rubio directed staff to begin preparing a policy grid to present the major issues before the Select Committee. He also indicated that at the November meeting, he wanted the Select Committee to begin considering policy recommendations for a segment of the issues within the policy grid.

Chair Rubio requested that I send interested parties the attached spreadsheet and solicit input for the Select Committee's November 8th Committee meeting. The spreadsheet presents eight initial policy questions addressing takings under the Community Redevelopment Act. The first two address underlying policy questions, and the remaining six address issues related to the definitions of slum and blight. Although some interested parties addressed these questions in their response to our last questionnaire, the responses varied in format and level of detail. To standardize the format of the responses, short, narrative policy recommendations inserted into the appropriate column in the spreadsheet are requested.

In addition to the issues in the attached spreadsheet, staff identified the following broad issue categories within the CRA context: 1) procedural requirements; 2) level of judicial deference and burden of proof; 3) compensation. Although we are not soliciting recommendations under these categories for November's meeting, your suggestions regarding additional categories of issues or sub-issues under the listed categories would be appreciated.

Please email your responses to me in the form of an attached spreadsheet by close of business, Thursday, November 3.

Please call me at (850) 4871342 if you have any questions.

Thanks,

Tom Hamby, Staff Director
Select Committee to Protect to Private Property Rights

RESPONSES TO MATRIX 1

ISSUE 1

As a matter of general policy, is it appropriate for government to take private property for the purpose of eliminating, and then preventing the recurrence of, slum or blight conditions?

Respondent	Response to Issue 1
Walt Augustinowicz	No. A free market system will remedy these problems over time in much more just manner. All this would really do is remove "affordable housing". It would be nice to have a country with no slum and blight but we are not a socialist state. What we consider a slum is a palace to some.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	Yes, it is a time honored and legitimate function of local government and very important in assisting communities in redevelopment
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes.
Louis Roney	Only for infrastructure for public use
Douglas Sale, Panama City Beach CRA	Yes, where an adequate public purpose is served. Determination of public purpose is a legislative function.
Wade Hopping—Property Rights Coalition	Yes, provided "slum" and "blight" are appropriately defined by law.
S.W. Moore and John W. Little—Brigham Moore	Yes, if public health, safety and welfare require the elimination of slum / blight, then a taking may be warranted. No, if the rationale for the taking is "prevention" or to achieve an un-necessary, but, simply desirable goal.
Florida League of Cities	Yes. Eliminating, and then preventing the recurrence of, slum or blight conditions serves a proper public purpose, as determined through the legislative process.
Bradley S. Gould, Esq.	Yes, it is appropriate for the government to take private property for the purpose of eliminating slum or blighted conditions in order to protect the public health, safety, and welfare. The underlying rationale of such takings should be to eliminate horrible living conditions that cause the spread of disease and crime. The government should not take private property if the taking is to prevent slum or blight conditions or to achieve redevelopment.

Respondent	Response to Issue 1
Florida Association of Counties	Depending on the circumstances, yes. As a matter of last resort, eminent domain can be appropriate to eradicate slum or blight and to prevent its recurrence. When condemned property is shown to have created a menace to public health, safety and welfare of other citizens or when permanent, inherent and fundamental defects in land render the land dysfunctional and disportionately burdensome to other citizens, eminent domain may be appropriate. In addition, the condemning authority may have some obligation to prevent the recurrence of the conditions that led to the slum or blight conditions and the need for its eradication.
Bill Van Allen, Jr.	No. One man's affordable housing is another man's blight or eyesore. As long as individuality exists, utopia is not an option.

Respondent	Response to Issue 1
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes, if public health, safety, morals, and welfare require the elimination of slum or blight, then a taking may be held constitutional. No, if the slum or blight is dubious and used only as a pretext for economic development. Such a response returns to the understanding that in order for a taking to be justified there needs to be a showing that the taking of private property advances a traditional government function or eliminates a social harm. The general policy hereby advocated is that which (1) fosters a limited view of what is or isn't a traditional goverment function and (2) relates the purported taking in this instance as eliminating a social harm. The social harm is that an area in question suffers from genuine slum or blighted conditions and an involuntary taking of private property is reasonably necessary to eliminate such conditions. It follows that if slum and blight are genuine, then the predominance of public purpose over private gain is manifest as the emphasis is on remedying the existing condition. The "devil" in this policy area is "in the details." Unless "slum" and "blight" are carefully defined and capable of objective measurement, the terms can become mere justifying labels for taking of property when it is merely desired by some to upgrade its utility for economic stimulus or when a private interest has exerted political influence on a condemning authority to assemble the land for predominantly private entrepreneurial gain. All re-development will increase tax base and create jobs, etc. - so even when a private entity is the main beneficiary of a redevelopment, some "public benefit" can be claimed. If the triggering definitions of slum or blight are too loose or overbroad, the risk increases that takings for private re-conveyance will occur when there really is no social evil to redress. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.335**; **§163.340**; §163.355; §163.360; §163.370; **§163.375**; **§127.01**; **§166.411**.

ISSUE 2

If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it appropriate for government to transfer ownership or control of the taken property to another private entity for the purpose of redeveloping the property? If so, under what circumstances?

Respondent	Response to Issue 2
Walt Augustinowicz	No. Never.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	In certain circumstances, the use of public private partnerships are very effective and serve important public purposes. This should happen only as a result of a very transparent process with full opportunity for public participation and substantiated by adequate studies to show the effectiveness to serve the public purpose.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes, it is, provided that the express intent is the removal or prevention of slums or blighting conditions. As a practical matter, when a unit of local government is engaged in a redevelopment activity, it would seem be inappropriate for the government to engage in a development activity in direct competition with private enterprise. Development by the government should be limited to constructing the public facilities necessary to support the balance of the redevelopment by private enterprise.
Louis Roney	NO -- ABSOLUTELY NOT – this is plainly dishonest subterfuge
Douglas Sale, Panama City Beach CRA	See No. 1. At time of a private-to-private taking, local legislative body should find property "material" (or other similar word) to re-development effort based on competent substantial evidence in quasi judicial hearing, and additional compensation should be paid.
Wade Hopping—Property Rights Coalition	This is a harder question to answer. If you answer yes, you start down a slippery slope of what the limits are that you must impose to keep this practice from becoming a ruse for taking property from one private party to give to another private party. If you answer no, you limit the ultimate use of the property taken to governmental uses. As of today, we are inclined to a very cautious and qualified yes answer.
S.W. Moore and John W. Little—Brigham Moore	Private ownership to achieve the elimination of blight or slum is not, in itself, unconstitutional; if and only if the true purpose of the taking is to eliminate slum / blight. A taking and subsequent transfer to a private entity under the rationale of "prevention" or "economic development" should not be permitted.

Respondent	Response to Issue 2
Florida League of Cities	Florida's Community Redevelopment Act expressly acknowledges and encourages the use of private enterprise as a tool, not the objective, of redevelopment. In the context of a taking for an eventual private-to-private transfer of property, the Florida League of Cities has proposed heightened procedural and substantive protections for property owners. In summary, require extraordinary notice and opportunities for property owners' participation at the beginning of redevelopment activities, for takings require a local legislative body to determine property is "essential" (or other appropriate standard) to redevelopment plan goals at a quasi-judicial hearing, and require extraordinary compensation.
Bradley S. Gould, Esq.	The transfer of ownership to a private party is not unconstitutional as long its true purpose is to eliminate slum or blighted conditions. However, a taking and subsequent transfer of ownership to a private party for the purposes of prevention or "economic redevelopment" should be illegal and prohibited.
Florida Association of Counties	Depending on the circumstances, yes. When the bona fide primary purpose of the taking is to eradicate the slum or blight and to then prevent its recurrence, the fact that the redevelopment activities in furtherance of that purpose are carried out by private entities is incidental to the primary public purpose. Such a circumstance would not negate the primary and valid public purpose of slum or blight eradication and subsequent prevention. For example, if a CRA sought to eradicate bona fide residential slum conditions and uses the power of eminent domain to fully achieve that purpose, whether the land is ultimately rebuilt with a publicly-owned and controlled facility, like a public housing agency or whether the same facility is provided by a private housing provider could be incidental to the purpose of slum eradication.
Bill Van Allen, Jr.	It is never appropriate for the right to property guaranteed by the Florida Constitution to be abridged by government, no matter what the reason.

Respondent	Response to Issue 2
Andrew P. Brigham and Amy Boulris—Brigham Moore	The predicate in the first part of the preceding question is the condition precedent which justifies the taking. Only when the taking is for the purpose of eliminating slum or blight is a transfer from one private entity to another warranted. The legal test is whether there is a predominance of public, over private, purpose. The benefits to the public should not be merely incidental when compared to the private gain. The cart must always precede the horse. If there is no genuine slum or blight, then there should not be a taking because the tail would be wagging the dog. If there is genuine slum or blight, then not only may the property be taken, but title may be transferred but only as a means to achieve the legitimate end of eliminating slum or blight. In this sense, there should never be a taking and subsequent transfer of private ownership wherein the predominate purpose is to advance econonmic development rather than to eliminate slum or blight. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.335**; **§163.340**; §163.355; §163.360; **§163.370**; **§163.375**; **§127.01**; **§166.411**.

ISSUE 3

If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it sufficient for the overall area of the community redevelopment district to meet the definitions of "slum area" or "blight area" or should the parcel being taken or the surrounding area meet these definitions?

Respondent	Response to Issue 3
Walt Augustinowicz	It is not appropriate but if you deemed it so the parcel being taken should have to meet the definition.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	The redevelopment of slum and blighted areas can only occur effectively in a comprehensive fashion; parcels that are related to one another and which are part of the redevelopment plan must be planned and redeveloped together. Piecemeal redevelopment is self defeating
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	For some 50 years, based on Berman v. Parker, it has been understood that there might be some properties that are not slums or blighted, but that the need for redeveloping the overall area could involve the assembly of some of those properties. The effective implementation of an adopted plan could significantly hampered if it was necessary to "work around" a property that was not blighted *per se.*
Louis Roney	Taking of property must be exclusive to actual parcel proved by law to be blighted
Douglas Sale, Panama City Beach CRA	Issue should not be whether parcel condemned is itself blighted; issue is weather at time of take the parcel is necessary to implement the redevelopment plan and achieve the underlying legislative purpose. See 8 below. Property owners should have the opiton of redeveloping their own parcels unless redevelopment plan requires assembling parcels into unified tract. Sometimes assembly is critical or unavoidable and without eminent domain a single holdout is given veto power over a legitimate public purpose.
Wade Hopping—Property Rights Coalition	The parcel being taken should meet the definitions.
S.W. Moore and John W. Little—Brigham Moore	The surrounding area, if truly a slum or blighted area, should support a taking of a particular parcel within that area, even if that individual parcel is not within the definition of slum or blight. However the broad "overall area" designation is too expansive to support a condemnation of an un-blighted parcel. There must be some definitive or objective parameters to the "slum / blighted" area.

Respondent	Response to Issue 3
Florida League of Cities	Under the various circumstances that exist in Florida's extremely diverse communities, local governments require a reasonable community redevelopment statutory framework in which to make legislative determinations that factors have been met to declare an overall area as either slum or blighted. Community redevelopment powers must then be exercised based upon achieving overall area redevelopment goals. Because of the interdependence of tax increment financing, land assembly, possible exercises of the power of eminent domain, and private enterprise participation in redevelopment activities, redevelopment powers must be based upon overall area considerations. Land assembly may be fundamental to achieving tax increment financing, private enterprise participation, etc., and hold out property owners should not be positioned to defeat overall area redevelopment goals.
Bradley S. Gould, Esq.	To warrant the use of the powers of eminent domain, the surrounding area must meet the criteria for slum or blight. However, a particular property does not necessarily have to meet the criteria for slum or blight to be taken so long as the property is necessary to eliminate the slum or blight conditions of the surrounding area and is an integral part of the redevelopment plan. "Overall area" is to expansive to support the condemnation of an un-blighted parcel. There must be some objective and definitive parameters for the slum or blighted area.
Florida Association of Counties	A parcel-specific slum or blight examination for purposes of eminent domain could completely undermine the public investment in the CRA by rendering the adopted redevelopment plan unattainable, particularly if the parcel is critical to the implementation of the plan. However, a "surrounding area" examination for slum or blight for purposes of eminent domain may strike an appropriate balance between protecting private property rights and allowing the public investment in the redevelopment plan to continue.
Bill Van Allen, Jr.	It is not appropriate to take private property under these conditions. In any exercise of eminent domain, the property taken should be of the smallest area definable.

Respondent	Response to Issue 3
Andrew P. Brigham and Amy Boulris—Brigham Moore	Under Florida law, at present, it is conceivable that an "unblighted" property may be taken to eliminate slum or blighted conditions of the surrounding area. Specifically, existing law does not permit an owner to challenge a taking based on "pinpointing" or asserting that his or her individual property is not blighted. Notwithstanding, while an owner may not assert a defense requiring the government to "pinpoint" blight, there is no present requirement on government to show to what extent slum or blight conditions exist so as to establish the boundaries of an "area." This allows "unblighted" neighborhoods to be combined with "blighted" neighborhoods into one "area" so long as statistically some factors of blight exist. It is strongly advocated that less stringent requirements are needed with regard to establishing an area for tax increment financing, but that more stringent requirements are needed if contemplating the use of the eminent domain power. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**.

ISSUE 4

For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "slum area" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of slum conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

Respondent	Response to Issue 4
Walt Augustinowicz	Yes. The slum definitions should only include a health hazard or safety hazard to the people. And a health hazard should not just be a house with a septic system instead of city sewer. In Sarasota County, the county spilled more sewage last year than all the tanks combined.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	No changes are necessary, as the criteria have been recently strengthened
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	I believe that the current definitions adequately define the circumstances that must be present in order for an area to be declared blighted and in need of redevelopment. As I've stated previously, if the Legislature believes it is necessary, I would not have a problem with adding a prohibition of using "economic development" as an original reason for using eminent domain to assemble property for redevelopment.
Louis Roney	EXACT conditions must be specified by statute. No stretching of ambiguous terms should be allowed.
Douglas Sale, Panama City Beach CRA	No. In general terms, the following conditions should be present to justify a taking: "physical or economic conditions conductive to disease, infant mortality, poverty and crime." Of course, this is the introduction to the current definition. Current specific criteria are narrow and acceptable.
Wade Hopping—Property Rights Coalition	The "slum area" definition is adequate.
S.W. Moore and John W. Little—Brigham Moore	Yes, changes are necessary. "Slum" should be a more objective, quantifiable term for purpose of eminent domain; but not necessarily for voluntary "tax increment financing" acquisitions. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, at pages 9 - 13 for specific suggested changes to the statutory definitions.

Respondent	Response to Issue 4
Florida League of Cities	A dual or "bifurcated" process whereby a determination of slum or blight is made for the purpose of eminent domain, and a separate determination (possibly using different standards) is used to determine slum or blight for other community redevelopment purposes (for instance tax increment financing) will be impracticable. Because of the interdependence of successful tax increment financing, land assembly, possible exercises of eminent domain, and private enterprise participation, a single statutory definition of "slum area" should apply in context to all community redevelopment powers and activities. The current statutory definition and factors to determine "slum area" are sufficiently narrow in scope.
Bradley S. Gould, Esq	Yes, changes are needed. "Slum" should be more objective, measurable, and quantifiable through standards involving the comprehensive plan, local building codes, and local, state, and federal safety laws for purposes of utilizing the power of eminent domain.
Florida Association of Counties	For purposes of eminent domain, unless the data on Florida's CRAs shows that CRAs, created for slum eradication, are creating concerns for private property owners, the definition of "slum" may not need to change. However, if the need exists to alter the CRA definition of "slum," potential changes could include requiring an affirmative showing of the definitional elements of "slum." In addition, the language that the slum area is a menace to the health, safety and welfare of the locality could be added to the definitional elements and requirements.
Bill Van Allen, Jr.	Yes. The definition of slum should only include an imminent danger to others, such as a house that's structurally unfit for habitation. "Public interest" is insufficient warrant, and "public use" should be limited to rights-of-way, and ED used ONLY as a last resort.

Respondent	Response to Issue 4
Andrew P. Brigham and Amy Boulris—Brigham Moore	There are two signficant reasons why the statutory definitions of "slum area" in Florida's Community Redevelopment Act require change. First, the desire of local governments to establish redevelopment areas (areas that are designated either slum or blight) has grown because of the success of tax increment financing as a tool to advance redevelopment. Unfortunately, lowering the definitional threshold of slum or blight to allow tax increment financing has also lowered the threshold for eminent domain. Moreover, a unitary threshold requires that an owner challenge the slum or blight designation that undergirds the entirety of public financing within a CRA, not just the particular exercise of the eminent domain power. Thus, a condemning authority only need argue that if the court finds public purpose lacking, such a ruling not only denies the taking, but voids the entire financing mechanism. Under this rubric, slum or blight is not reviewed at the time of taking, but is tied to the point in time referenced by the blight designation itself. The remedy for this first ill is to uncouple the definitional threshold of slum and blight for tax increment financing from that required when contemplating the use of the eminent domain power. Second, because the present factors for slum and blight are vague and ambigous, courts apply a policy of judicial restraint ("legislative deference" or "presumption of correctness") to prior decisions of local government. Thus, any vague or ambigous term is left for the local government's discretion. (This, of course, echoes Kelo). Such policy of judicial restraint comes from the confusion over the standard of judicial review. At present, it is only in the context of redevelopment takings that the courts depart from original jurisdictional review and revert to a deferential appellate review of a lower tribunal (local goverment). This is similar to the review given to a quasi-legislative or quasi-judicial land use decision where eminent domain taking of private property, a constitutional fundamental right, is not involved. The cure to this second ill is to not leave the factors of slum and blight vague and ambiguous when used for eminent domain; there needs to be specific, measurable criteria that expressly limit the use of eminent domain except upon clear and convincing evidence presented before a court with original jurisdiction. It is helpful to distinguish a general finding of necessity from a specific finding of necessity. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

ISSUE 5

For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "blight areas" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of blight conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

Respondent	Response to Issue 5
Walt Augustinowicz	Yes. The blight definition should be discarded all together. Roads with grass growing through them because the government authority has not maintained them should not qualify. Also, what a government authority now deems as bad planning but once approved should also not be a reason for declaring blight.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	Changes are not necessary. The current constitutional law and statutes protect against illegal takings.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	No changes are needed.
Louis Roney	Wherever statutes are not precise, they should be changed to insure precision.
Douglas Sale, Panama City Beach CRA	Yes, specific criteria could be tightened. In general terms, the following conditions should be present to justify a taking: "deteriorate, or deteriorating structures leading to econimic distress or danger to life and property." Of course, this is the introduction to the current definition. However, current specific criteria could be tightened, but are not being abused, or used other than to serve the public purposes they were intended to advance.
Wade Hopping—Property Rights Coalition	The "blighted area" 14 specific factors and the catchall tax authority criteria is too broad to support the taking of private property. For specific proposals, see the 11/8/05 Property Rights Coalition's (PRC) attached proposals.
S.W. Moore and John W. Little—Brigham Moore	See answer #4. What is needed are specific, measurable criteria for condemnation; while maintaining the lesser, subjective criteria for all other purposes.
Florida League of Cities	See response to Question 4. While maintaining the community redevelopment process as a viable, affordable, and workable tool to address local public policy concerns of slum or blight, the Florida League of Cities would consider redefining the statutory definition of "blight area" to address specific concerns with current blight determination factors. Revisions could include grouping factors and requiring specified determinations, requiring a specified number of factors to be met, requiring threshold percentages of specified factors, etc.

Respondent	Response to Issue 5
Bradley S. Gould, Esq	Yes, changes are needed. "Blight" should be more objective, measurable, and quantifiable through standards involving the comprehensive plan, local building codes, and local, state, and federal safety laws for purposes of utilizing the power of eminent domain.
Florida Association of Counties	For purposes of eminent domain, a taking to eradicate blight could be required to include a showing that the property or its surrounding area is a menace to the health, safety and welfare to the locality; the taking could be required to show not just a "substantial number" of deteriorated structures but that a "predominance of" structures meet the statutory criteria; and the taking could be required to show more factors than the law currently requires. In addition, the current statutory factors for blight could be reexamined for their policy significance and their appropriateness of use for designating an area as blighted. Finally, as for suggestions on the creation of CRAs generally, see the response to question 7 below.
Bill Van Allen, Jr.	Yes. One man's eyesore is another man's affordable housing, so blight should be eliminated as an excuse to exercise ED. Lack of modernity (e.g. aging properties) is one way that the free market allows for affordable housing, and their elimination causes more problems than it fixes.
Andrew P. Brigham and Amy Boulris—Brigham Moore	See answer #4. What is needed are specific, measurable criteria for condemnation; while maintaining the lesser, subjective criteria for all other purposes. Addtionally, there is need within the existing statute to distinguish between a general finding of necessity for redevelopment powers apart from eminent domain from a specific finding of necessity which is a condition precedent for a proposed taking. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

ISSUE 6

If the definitions of "slum area" and "blighted area" are revised for purposes of taking property by eminent domain, should the revised definition apply to existing CRA's in future attempts to take property?

Respondent	Response to Issue 6
Walt Augustinowicz	Yes.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	If this question is asking whether the definitions should be applied retroactively to existing CRAs, they should not be
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Some consideration should be given to CRA's who are invested in carrying out a redevelopment project to an extent where limiting their use of eminent domain could be costly, e.g., entered into a binding acquisition and development agreement, incurred debt, etc.
Louis Roney	Properly worded, up-to-date statute definitions should be applied to all previously existion CRA's
Douglas Sale, Panama City Beach CRA	Depends upon extent of change and effect on adopted plan. Current plans made in good faith under current law should not be frustrated, but if at time of take property not needed for existing plan, then should not be condemned. See Nos. 2 & 8. Additional procedural protections and compensation should apply wherever possible.
Wade Hopping—Property Rights Coalition	Yes.
S.W. Moore and John W. Little—Brigham Moore	Yes. It is the "future" takings of a citizen's private property that must be safeguarded. Failure to protect the owner within existing CRA's would negate the importance of the revised legislation.
Florida League of Cities	See response to Question 4. Any revised definitions of "slum area" or "blighted area" should apply for all community redevelopment powers and activities. Therefore, any revisions to the definitions of "slum area" or "blighted area" may require only prospective application due to impacts upon existing redevelopment plans and activities. However, proposed heightened procedural and substantive protections should apply as appropriate (See Question 2).
Bradley S. Gould, Esq	Yes. Revisions to the definitions of slum or blight should apply to existing CRAs for all future takings. Otherwise only a few property owners would benefit from the revised legislation.
Florida Association of Counties	Yes, but a balance should be struck so as to not undermine the public investment in existing CRAs completely.
Bill Van Allen, Jr.	Absolutely.

Respondent	Response to Issue 6
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes. It is the "future" takings of a citizen's private property that must be safeguarded. Failure to protect the owner within existing CRA's would negate the importance of the revised legislation. Thus, any revision to the statutory provisions should uphold previously adopted blight designations for the purpose of a local government exercising redevelopment powers other than eminent domain within an existing CRA, but require that "future" takings comply with the revised legislation and require that factors of slum or blight exist at the time of taking. "Future" takings should include both cases in which the courts have not yet rendered an order of taking and also those cases yet pending appellate review.

ISSUE 7

If the definitions of "slum area" and "blighted area" are revised with respect to takings, should the new definitions also apply to designations of slum or blighted areas in the creation of future CRAs or the expansion of existing CRA boundaries?

Respondent	Response to Issue 7
Walt Augustinowicz	Yes.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	No response
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Yes.
Louis Roney	If revised definitions are precise and protect propertry owners as intended, they should, of course, be applied to all new CRA's and expansions of existing CRA's
Douglas Sale, Panama City Beach CRA	No. Increment financing has broader applicaton than eminent domain. Witness number of existing CRA's not involved in condemnations. But bifurcation of definitions unworkable and not necessary if extra procedural protection and compensation provided for private to private takes.
Wade Hopping—Property Rights Coaltion	Yes, but see the PRC's 11/8/05 proposals attached.
S.W. Moore and John W. Little—Brigham Moore	There should be a demarcation between the strict, precise slum / blight definitions for eminent domain, and the more lenient definition for all other purposes - whether in existing or future CRA's.
Florida League of Cities	See response to Question 4. Any revised definitions of "slum area" or "blighted area" should apply for all community redevelopment powers and activities. Application of any new definitions should not impact planned redevelopment activities or tax increment financing. A dual or "bifurcated" system is not necessary with the provision of heightened procedural and substantive protections (See Question 2).
Bradley S. Gould, Esq.	The revised definitions of slum or blight should apply to the use of the power of eminent domain, but not for other purposes under Chapter 163.

Respondent	Response to Issue 7
Florida Association of Counties	If certain other inherent issues with CRAs are not addressed, as further explained in this answer, then any new definitions of slum or blight must also apply to the creation and expansion of CRAs. Current law allows CRAs to be created by municipalities in non-charter counties with no input from or oversight by the county although the county is required to contribute countywide taxpayer dollars to the CRA for periods as long as 40 years. The Florida Association of Counties believes that the Community Redevelopment Act does not provide an adequate check to this municipal power to appropriate county taxpayer dollars. In fact, very few requirements exist for the creation of a CRA that would work to limit the geographic size of the slum or blight area of a CRA. The bifurcation of the blight definition for purposes of tax increment financing and eminent domain will eliminate one of the few existing checks on the size of the CRA; that check is the private property owners' desire to not be subject to eminent domain under the CRA's powers. Without otherwise solving the issue of intergovernmental coordination and forced taxpayer contribution, any modification of slum and blight criteria must also apply to the creation and expansion of CRAs.
Bill Van Allen, Jr.	Absolutely.
Andrew P. Brigham and Amy Boulris—Brigham Moore	Again, if uncoupling tax increment financing from eminent domain, it is proposed that the definitional threshold needed to create a future CRA or expand the boundaries of an existing CRA changes very little and remains quite lenient. The only "tightening up" that occurs is that which makes more stringent the definitional threshold for the use of eminent domain as distinguished from other redevelopment powers.

ISSUE 8

If existing and future CRAs are required to comply with a more strict definition of slum or blighted area at the time of a taking, are other statutory changes necessary to limit the length of time that a slum or blight designation remains valid?

Respondent	Response to Issue 8
Walt Augustinowicz	Yes. Absolutely. We have CRAs using decades old declarations to take property today.
Nancy E. Stroud, Weiss Serota Helfman Pastoriza	An arbitrary time frame would defeat the purposes of redevelopment. Redevelopment plans should be required to be updated and revisited periodically, but no artificial time frame should be imposed. One size does not fit all.
Steve Lindorff, Director of Planning & Development, City of Jacksonville Beach	Community redevelopment is a vital and necessary endeavor. However, it cannot be carried out "on the clock." The present limit of thirty years fro tax increment districts is the minimum amount of time that should be reserved for carrying out an adopted redevelopment plan. There are too many market forces that can work to delay the best laid timeframe to carry the plan.
Louis Roney	New stricter statutes enacted at this time should remain in place until and if new statutes are enacted
Douglas Sale, Panama City Beach CRA	No. However, regardless of whether definitions are changed, the legislative determination to take should be made by the local government in a quasi-judicial hearing based upon competent substantial evidence after notice to the owner, and only upon a finding that at the time the determination to take is made the specific parcel is "material" (or similar word) to the redevelopment plan in its then current state of implementation. Just because the the determination of slum and blight must continue for the life of the redevelopment plan if financing is to be available, does not mean that the need to take any particular parcel (regardless of whther it is itself blighted) is necessary to implement the plan at a give point in time
Wade Hopping—Property Rights Coalition	Yes. See also the PRC's attached proposals.
S.W. Moore and John W. Little—Brigham Moore	Yes, a 7 year period is appropriate, and is consistent with that period applicable to a local comprehensive plan. No slum / blight designation should extend further than 7 years, if used to support a condemnation of private property.
Florida League of Cities	See response to Question 2. Based upon the Florida League of Cities' proposed heightened procedural and substantive protections to private property owners facing an exercise of eminent domain which will result in a private-to-private transfer of property, slum or blight determinations should exist for the entire duration of the community redevelopment process. Maintaining slum or blight determinations provides for the long-term financing mechanism for redevelopment activities, and such determinations in themselves do not mean a particular parcel is necessary to implement a redevelopment plan.

Respondent	Response to Issue 8
Bradley S. Gould, Esq.	Yes. A slum or blight designation should only apply for purposes of eminent domain for a 7 year period,. This period is consistent with the 7 year period for local comprehensive plans.
Florida Association of Counties	Current law provides no required sunset on the life of the CRA and therefore, no expiration on the initial finding of slum or blight. The only restrictions that exist are on the length of time for the tax increment financing bonds and consequently for the length of time that the taxing authorities that did not create the CRA must contribute its tax increment. In light of the potential perpetual existence of the slum or blight findings, it may be appropriate to consider sunsetting other powers of a CRA.
Bill Van Allen, Jr.	Yes, without question.
Andrew P. Brigham and Amy Boulris—Brigham Moore	Yes, a 7 year period is appropriate, and is consistent with that period applicable to a local comprehensive plan (evaluation and appraisal reporting). However, if uncoupling tax increment financing from eminent domain, then the question of whether factors of slum and blight exist is to be referenced to specific necessity at the time of taking and not to the blight designation that established a general necessity for other redevleopment powers. Please refer to the FLORIDA REDEVELOPMENT REFORM (Second Draft Revisions) submitted by Brigham Moore, LLP, **§163.340**; **§163.355**; **§163.375**.

Draft List of Policy Issues

SELECT COMMITTEE TO PROTECT PRIVATE PROPERTY RIGHTS
DRAFT LIST OF POLICY ISSUES
November 4, 2005

UNDERLYING POLICY QUESTIONS IN THE CRA CONTEXT

1. As a matter of general policy, is it appropriate for government to take private property for the purpose of eliminating, and then preventing the recurrence of, slum or blight conditions?

2. If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it appropriate for government to transfer ownership or control of the taken property to another private entity for the purpose of redeveloping the property? If so, under what circumstances?

DEFINITIONAL ISSUES IN THE CRA CONTEXT

3. If it is appropriate to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, is it sufficient for the overall area of the community redevelopment district to meet the definitions of "slum area" or "blight area" or should the parcel being taken or the surrounding area meet these definitions?

4. For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "slum area" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of slum conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

5. For the purpose of exercising the power of eminent domain, are changes to the statutory definitions of "blight areas" in Florida's Community Redevelopment Act necessary to more clearly define conditions sufficient to justify taking of private property for the public purpose of eliminating and then preventing the recurrence of blight conditions? If changes are necessary, in general terms, what conditions should be present in order to justify a taking?

6. If the definitions of "slum area" and "blighted area" are revised for purposes of taking property by eminent domain, should the revised definition apply to existing CRA's in future attempts to take property ?

7. If the definitions of "slum area" and "blighted area" are revised with respect to takings, should the new definitions also apply to designations of slum or blighted areas in the creation of future CRAs or the expansion of existing CRA boundaries?

8. If existing and future CRAs are required to comply with a more strict definition of slum or blighted area at the time of a taking, are other statutory changes necessary to limit the length of time that a slum or blight designation remains valid?

COMPENSATION ISSUES IN THE CRA CONTEXT

9. Does the current method of calculating compensation fairly compensate private landowners for taken property?

10. Should business damages be paid for total takings of private commercial property?

11. Should owners of taken property that may be transferred to another private party receive additional compensation if an increase in property value is anticipated due to the redevelopment project?

12. In addition to the currently provided moving expenses, are there other relocation expenses that should be paid to property owners for takings of commercial or residential property?

13. Should a private homeowner receive "replacement" cost for taken homestead property, i.e., the amount required to purchase a comparable home?

14. Should owners of taken homestead property be reimbursed for the cost of losing the Save Our Homes protection?

JUDICIAL STANDARD OF REVIEW AND BURDEN OF PROOF IN THE CRA CONTEXT

15. If a local government wishes to take private property for the purpose of eliminating and then preventing the recurrence of slum or blight conditions, and the property may be transferred to another private party, what should the government be required to demonstrate?

    a. That the specific property is slum or blighted, that slum or blight conditions exist in the "immediate neighborhood" of the property sought to be acquired, or that slum or blight conditions existed at the time the community redevelopment area was initially created?

    b. That the taking of the specific property achieves the public purpose of eliminating and then preventing the recurrence of slum or blight? That the public benefits predominate over incidental private gain at the time of the taking or some other standard?

    c. That the parcel is "reasonably" necessary to achieve the public purpose of eliminating and then preventing the recurrence of slum or blight conditions or some higher standard?

16. What burden of proof should apply when a CRA attempts to take private property if the property may be transferred to another private party? Competent and substantial evidence? Preponderance of the evidence? Clear and convincing evidence?

17. Should the decision by local government to take private property be subject to heightened judicial review if the property may be transferred to another private owner? In other words, should the "fairly debatable" standard currently applicable to local government legislative decisions to take private property be replaced with more stringent judicial review?

18. Should property owners be provided an opportunity to defend against a taking by showing that the property owner has a practical and economically feasible plan to cure or rehabilitate slum or blight conditions as an alternative to the use of eminent domain?

PROCEDURAL ISSUES IN THE CRA CONTEXT

19. Do county or city resolutions finding slum or blight adopted pursuant to s. 163.355, F.S., adequately inform property owners that the power of eminent domain may be utilized to obtain property within the CRA?

20. Should the redevelopment plan indicate that eminent domain may be used to acquire property?

21. At what point in the process should the redevelopment plan be adopted, i.e., at the same time as the resolution of necessity or at some later point in the process?

22. Should the redevelopment plan specifically identify property to be acquired and the anticipated use of each parcel?

23. Is it appropriate to condemn private property prior to adoption of a redevelopment plan?

24. Should "quick takes" be permitted in the CRA context?

25. Should the elected body be required to approve each specific taking of private property within a CRA?

26. Are current statutory requirements for good faith negotiations and good faith offers prior to a taking sufficient?

HOME RULE ISSUES OUTSIDE THE CRA CONTEXT

27. Should the Legislature limit the home rule powers of cities and counties to prevent takings for economic development purposes?

28. Should the statutes define "economic development" and prevent takings for the purpose of "economic development" or is there an alternative means of preventing takings for that purpose?

SUGGESTED ISSUES PROVIDED BY INTERESTED PARTIES

1. S.W. Moore and John W. Little for Brigham Moore, LLP: Under Procedural Issues, consider property owners' opportunity to be heard, cross-examine and present witnesses.

2. Florida Association of Counties: The Association suggests adding a category regarding intergovernmental coordination in non-charter counties.

HR 4128: Private Property Rights Protection Act of 2005

109th CONGRESS

1st Session

H. R. 4128

AN ACT

To protect private property rights.

HR 4128 EH

109th CONGRESS

1st Session

H. R. 4128

AN ACT

To protect private property rights.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the `Private Property Rights Protection Act of 2005'.

SEC. 2. PROHIBITION ON EMINENT DOMAIN ABUSE BY STATES.

(a) In General- No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property to be used for economic development or over property that is subsequently used for economic development, if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so.

(b) Ineligibility for Federal Funds- A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) Opportunity to Cure Violation- A State or political subdivision shall not be ineligible for any Federal economic development funds under subsection (b) if such State or political subdivision returns all real property the taking of which was found by a court of competent jurisdiction to have constituted a violation of subsection (a) and replaces any other property destroyed and repairs any other property damaged as a result of such violation.

SEC. 3. PROHIBITION ON EMINENT DOMAIN ABUSE BY THE FEDERAL GOVERNMENT.

The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain to be used for economic development.

SEC. 4. PRIVATE RIGHT OF ACTION.

(a) Cause of Action- Any owner of private property who suffers injury as a result of a violation of any provision of this Act may bring an action to enforce any provision of this Act in the appropriate Federal or State court, and a State shall not be immune under the eleventh amendment to the Constitution of the United States from any such action in a Federal or State court of competent jurisdiction. In such action, the defendant has the burden to show by clear and convincing evidence that the taking is not for economic development. Any such property owner may also seek any appropriate relief through a preliminary injunction or a temporary restraining order.

(b) Limitation on Bringing Action- An action brought under this Act may be brought if the property is used for economic development following the conclusion of any condemnation proceedings condemning the private property of such property owner, but shall not be brought later than seven years following the conclusion of any such proceedings and the subsequent use of such condemned property for economic development.

(c) Attorneys' Fee and Other Costs- In any action or proceeding under this Act, the court shall allow a prevailing plaintiff a reasonable attorneys' fee as part of the costs, and include expert fees as part of the attorneys' fee.

SEC. 5. NOTIFICATION BY ATTORNEY GENERAL.

(a) Notification to States and Political Subdivisions-

(1) Not later than 30 days after the enactment of this Act, the Attorney General shall provide to the chief executive officer of each State the text of this Act and a description of the rights of property owners under this Act.

(2) Not later than 120 days after the enactment of this Act, the Attorney General shall compile a list of the Federal laws under which Federal economic development funds are distributed. The Attorney General shall compile annual revisions of such list as necessary. Such list and any successive revisions of such list shall be communicated by the Attorney General to the chief executive officer of each State and also made available on the Internet website maintained by the United States Department of Justice for use by the public and by the authorities in each State and political subdivisions of each State empowered to take private property and convert it to public use subject to just compensation for the taking.

(b) Notification to Property Owners- Not later than 30 days after the enactment of this Act, the Attorney General shall publish in the Federal Register and make available on the Internet website maintained by the United States Department of Justice a notice containing the text of this Act and a description of the rights of property owners under this Act.

SEC. 6. REPORT.

Not later than 1 year after the date of enactment of this Act, and every subsequent year thereafter, the Attorney General shall transmit a report identifying States or political subdivisions that have used eminent domain in violation of this Act to the Chairman and Ranking Member of the Committee on the Judiciary of the House of Representatives and to the Chairman and Ranking Member of the Committee on the Judiciary of the Senate. The report shall--

(1) identify all private rights of action brought as a result of a State's or political subdivision's violation of this Act;

(2) identify all States or political subdivisions that have lost Federal economic development funds as a

result of a violation of this Act, as well as describe the type and amount of Federal economic development funds lost in each State or political subdivision and the Agency that is responsible for withholding such funds;

(3) discuss all instances in which a State or political subdivision has cured a violation as described in section 2(c) of this Act.

SEC. 7. SENSE OF CONGRESS REGARDING RURAL AMERICA.

(a) Findings- The Congress finds the following:

(1) The founders realized the fundamental importance of property rights when they codified the Takings Clause of the Fifth Amendment to the Constitution, which requires that private property shall not be taken `for public use, without just compensation'.

(2) Rural lands are unique in that they are not traditionally considered high tax revenue-generating properties for State and local governments. In addition, farmland and forest land owners need to have long-term certainty regarding their property rights in order to make the investment decisions to commit land to these uses.

(3) Ownership rights in rural land are fundamental building blocks for our Nation's agriculture industry, which continues to be one of the most important economic sectors of our economy.

(4) In the wake of the Supreme Court's decision in *Kelo v. City of New London*, abuse of eminent domain is a threat to the property rights of all private property owners, including rural land owners.

(b) Sense of Congress- It is the sense of Congress that the use of eminent domain for the purpose of economic development is a threat to agricultural and other property in rural America and that the Congress should protect the property rights of Americans, including those who reside in rural areas. Property rights are central to liberty in this country and to our economy. The use of eminent domain to take farmland and other rural property for economic development threatens liberty, rural economies, and the economy of the United States. The taking of farmland and rural property will have a direct impact on existing irrigation and reclamation projects. Furthermore, the use of eminent domain to take rural private property for private commercial uses will force increasing numbers of activities from private property onto this Nation's public lands, including its National forests, National parks and wildlife refuges. This increase can overburden the infrastructure of these lands, reducing the enjoyment of such lands for all citizens. Americans should not have to fear the government's taking their homes, farms, or businesses to give to other persons. Governments should not abuse the power of eminent domain to force rural property owners from their land in order to develop rural land into industrial and commercial property. Congress has a duty to protect the property rights of rural Americans in the face of eminent domain abuse.

SEC. 8. DEFINITIONS.

In this Act the following definitions apply:

(1) ECONOMIC DEVELOPMENT- The term `economic development' means taking private property, without the consent of the owner, and conveying or leasing such property from one private person or entity to another private person or entity for commercial enterprise carried on for profit, or to increase tax revenue, tax base, employment, or general economic health, except that such term shall not include--

(A) conveying private property--

(i) to public ownership, such as for a road, hospital, airport, or military base;

(ii) to an entity, such as a common carrier, that makes the property available to the general public as of right, such as a railroad or public facility;

(iii) for use as a road or other right of way or means, open to the public for transportation, whether free or by toll;

(iv) for use as an aqueduct, flood control facility, pipeline, or similar use;

(B) removing harmful uses of land provided such uses constitute an immediate threat to public health and safety;

(C) leasing property to a private person or entity that occupies an incidental part of public property or a public facility, such as a retail establishment on the ground floor of a public building;

(D) acquiring abandoned property;

(E) clearing defective chains of title;

(F) taking private property for use by a public utility; and

(G) redeveloping of a brownfield site as defined in the Small Business Liability Relief and Brownfields Revitalization Act (42 U.S.C. 9601(39)).

(2) FEDERAL ECONOMIC DEVELOPMENT FUNDS- The term `Federal economic development funds' means any Federal funds distributed to or through States or political subdivisions of States under Federal laws designed to improve or increase the size of the economies of States or political subdivisions of States.

(3) STATE- The term `State' means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States.

SEC. 9. SEVERABILITY AND EFFECTIVE DATE.

(a) Severability- The provisions of this Act are severable. If any provision of this Act, or any application thereof, is found unconstitutional, that finding shall not affect any provision or application of the Act not so adjudicated.

(b) Effective Date- This Act shall take effect upon the first day of the first fiscal year that begins after the date of the enactment of this Act, but shall not apply to any project for which condemnation proceedings have been initiated prior to the date of enactment.

SEC. 10. SENSE OF CONGRESS.

It is the policy of the United States to encourage, support, and promote the private ownership of property and to ensure that the constitutional and other legal rights of private property owners are protected by the Federal Government.

SEC. 11. BROAD CONSTRUCTION.

This Act shall be construed in favor of a broad protection of private property rights, to the maximum extent permitted by the terms of this Act and the Constitution.

SEC. 12. LIMITATION ON STATUTORY CONSTRUCTION.

Nothing in this Act may be construed to supersede, limit, or otherwise affect any provision of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601 et seq.).

SEC. 13. RELIGIOUS AND NONPROFIT ORGANIZATIONS.

(a) Prohibition on States- No State or political subdivision of a State shall exercise its power of eminent domain, or allow the exercise of such power by any person or entity to which such power has been delegated, over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto if that State or political subdivision receives Federal economic development funds during any fiscal year in which it does so.

(b) Ineligibility for Federal Funds- A violation of subsection (a) by a State or political subdivision shall render such State or political subdivision ineligible for any Federal economic development funds for a period of 2 fiscal years following a final judgment on the merits by a court of competent jurisdiction that such subsection has been violated, and any Federal agency charged with distributing those funds shall withhold them for such 2-year period, and any such funds distributed to such State or political subdivision shall be returned or reimbursed by such State or political subdivision to the appropriate Federal agency or authority of the Federal Government, or component thereof.

(c) Prohibition on Federal Government- The Federal Government or any authority of the Federal Government shall not exercise its power of eminent domain over property of a religious or other nonprofit organization by reason of the nonprofit or tax-exempt status of such organization, or any quality related thereto.

SEC. 14. REPORT BY FEDERAL AGENCIES ON REGULATIONS AND PROCEDURES RELATING TO EMINENT DOMAIN.

Not later than 180 days after the date of the enactment of this Act, the head of each Executive department and agency shall review all rules, regulations, and procedures and report to the Attorney General on the activities of that department or agency to bring its rules, regulations and procedures into compliance with this Act.

SEC. 15. SENSE OF CONGRESS.

It is the sense of Congress that any and all precautions shall be taken by the government to avoid the unfair or unreasonable taking of property away from survivors of Hurricane Katrina who own, were bequeathed, or assigned such property, for economic development purposes or for the private use of others.

Passed the House of Representatives November 3, 2005.

Attest:

Clerk.

END

FINAL VOTE RESULTS FOR ROLL CALL 568

(Republicans in roman; Democrats in *italic*; Independents underlined)

H R 4128 YEA-AND-NAY 3-Nov-2005 6:08 PM
QUESTION: On Passage
BILL TITLE: Private Property Rights Protection Act

	YEAS	NAYS	PRES	NV
REPUBLICAN	218	2		10
DEMOCRATIC	157	36		9
INDEPENDENT	1			
TOTALS	**376**	**38**		**19**

---- YEAS 376 ---

Abercrombie	Gingrey	*Napolitano*
Aderholt	Gohmert	Neugebauer
Akin	*Gonzalez*	Ney
Alexander	Goode	Northup
Allen	Goodlatte	Nunes
Andrews	*Gordon*	Nussle
Baca	Granger	*Oberstar*
Baird	Graves	*Obey*
Baker	Green (WI)	Osborne
Baldwin	*Green, Al*	Otter
Barrett (SC)	*Green, Gene*	*Owens*
Barrow	*Grijalva*	Oxley
Bartlett (MD)	*Gutierrez*	*Pallone*
Barton (TX)	Gutknecht	*Pascrell*
Bass	Hall	Paul
Bean	*Harman*	*Payne*
Beauprez	Harris	Pearce
Becerra	Hart	Pence
Berkley	Hastings (WA)	*Peterson (MN)*
Berman	Hayes	Peterson (PA)
Berry	Hayworth	Petri
Biggert	Hefley	Pickering
Bilirakis	Hensarling	Pitts
Bishop (GA)	Herger	Platts
Bishop (NY)	*Herseth*	Poe
Bishop (UT)	*Higgins*	*Pomeroy*
Blackburn	*Hinojosa*	Porter

Blunt	Hobson	Price (GA)
Boehner	Hoekstra	*Price (NC)*
Bonilla	*Holden*	Pryce (OH)
Bonner	*Holt*	Putnam
Bono	*Honda*	Radanovich
Boozman	*Hooley*	*Rahall*
Boren	Hostettler	Ramstad
Boustany	*Hoyer*	*Rangel*
Bradley (NH)	Hulshof	Regula
Brady (TX)	Hunter	Rehberg
Brown (OH)	Hyde	Reichert
Brown (SC)	Inglis (SC)	Renzi
Brown, Corrine	*Inslee*	*Reyes*
Burgess	*Israel*	Reynolds
Burton (IN)	Issa	Rogers (AL)
Butterfield	Istook	Rogers (KY)
Calvert	*Jackson-Lee (TX)*	Rogers (MI)
Camp	*Jefferson*	Rohrabacher
Cannon	Jenkins	Ros-Lehtinen
Cantor	Jindal	*Ross*
Capito	Johnson (CT)	Royce
Capps	Johnson (IL)	*Ruppersberger*
Cardin	*Johnson, E. B.*	*Rush*
Cardoza	Johnson, Sam	*Ryan (OH)*
Carnahan	Jones (NC)	Ryan (WI)
Carson	*Jones (OH)*	Ryun (KS)
Carter	*Kanjorski*	*Salazar*
Castle	*Kaptur*	*Sánchez, Linda T.*
Chabot	Keller	*Sanchez, Loretta*
Chandler	Kelly	Sanders
Chocola	Kennedy (MN)	Saxton
Clay	*Kennedy (RI)*	Schmidt
Clyburn	*Kildee*	Schwarz (MI)
Coble	*Kilpatrick (MI)*	*Scott (GA)*
Cole (OK)	*Kind*	Sensenbrenner
Conaway	King (IA)	*Serrano*
Conyers	King (NY)	Sessions
Cooper	Kingston	Shadegg
Costa	Kirk	Shaw
Costello	Kline	Shays
Cramer	Knollenberg	*Sherman*
Crenshaw	Kolbe	Sherwood
Crowley	*Kucinich*	Shimkus
Cubin	Kuhl (NY)	Shuster
Cuellar	LaHood	Simmons
Culberson	*Langevin*	Simpson

Cummings	*Lantos*	*Skelton*
Cunningham	*Larsen (WA)*	*Slaughter*
Davis (AL)	Latham	Smith (NJ)
Davis (CA)	LaTourette	Smith (TX)
Davis (IL)	Leach	*Smith (WA)*
Davis (KY)	*Lee*	*Snyder*
Davis (TN)	Lewis (CA)	Sodrel
Davis, Jo Ann	Lewis (KY)	*Solis*
Davis, Tom	Linder	Souder
Deal (GA)	*Lipinski*	*Spratt*
DeFazio	LoBiondo	Stearns
Delahunt	*Lofgren, Zoe*	*Strickland*
DeLauro	Lucas	*Stupak*
DeLay	Lungren, Daniel E.	Sweeney
Dent	*Lynch*	Tancredo
Diaz-Balart, L.	Mack	*Tanner*
Diaz-Balart, M.	*Maloney*	*Tauscher*
Dicks	Manzullo	*Taylor (MS)*
Doggett	Marchant	Taylor (NC)
Doolittle	*Markey*	Terry
Doyle	*Marshall*	Thomas
Drake	*Matheson*	*Thompson (CA)*
Dreier	*Matsui*	*Thompson (MS)*
Duncan	*McCarthy*	Thornberry
Edwards	McCaul (TX)	Tiberi
Emerson	*McCollum (MN)*	*Tierney*
Engel	McCotter	*Towns*
English (PA)	McCrery	*Udall (CO)*
Eshoo	*McGovern*	*Udall (NM)*
Etheridge	McHenry	Upton
Evans	McHugh	*Van Hollen*
Everett	*McIntyre*	*Velázquez*
Farr	McKeon	Walden (OR)
Feeney	*McKinney*	Walsh
Ferguson	*McNulty*	Wamp
Filner	*Meehan*	*Wasserman Schultz*
Fitzpatrick (PA)	*Meek (FL)*	*Waters*
Flake	*Melancon*	*Watson*
Foley	*Menendez*	*Weiner*
Forbes	Mica	Weldon (FL)
Ford	*Michaud*	Weldon (PA)
Fortenberry	*Millender-McDonald*	Weller
Fossella	Miller (FL)	Westmoreland
Foxx	Miller (MI)	*Wexler*
Frank (MA)	Miller, Gary	Whitfield
Franks (AZ)	*Mollohan*	Wicker

Frelinghuysen	*Moore (KS)*	Wilson (NM)
Gallegly	*Moore (WI)*	Wilson (SC)
Garrett (NJ)	Moran (KS)	*Wu*
Gerlach	Murphy	Young (AK)
Gibbons	*Murtha*	Young (FL)
Gilchrest	Musgrave	
Gillmor	Myrick	

---- NAYS 38 ---

Ackerman	*Larson (CT)*	*Rothman*
Blumenauer	*Levin*	*Sabo*
Boehlert	*Lowey*	*Schakowsky*
Brady (PA)	*McDermott*	*Schwartz (PA)*
Capuano	*Meeks (NY)*	*Scott (VA)*
Case	*Miller (NC)*	*Stark*
Cleaver	*Miller, George*	Turner
DeGette	*Moran (VA)*	*Visclosky*
Dingell	*Nadler*	*Watt*
Emanuel	*Neal (MA)*	*Waxman*
Fattah	*Olver*	*Woolsey*
Hinchey	*Pastor*	*Wynn*
Jackson (IL)	*Pelosi*	

---- NOT VOTING 19 ---

Bachus	Ehlers	*Roybal-Allard*
Boswell	*Hastings (FL)*	*Schiff*
Boucher	*Lewis (GA)*	Sullivan
Boyd	McMorris	Tiahrt
Brown-Waite, Ginny	Norwood	Wolf
Buyer	*Ortiz*	
Davis (FL)	Pombo	